IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.V.K.BALI

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

W.P.(C).No.8133 of 2005(R)

PETITIONER:-

K.PARUKUTTY AMMA, AGED 82 YEARS,
W/O.LATE JUSTICE M.MADHAVAN NAIR,
"RAMYA", MANIKKATH CROSS ROAD, RAVIPURAM,
ERNAKULAM, KOCHI 682 016.

BY ADV. SRI.ANIL K.NARENDRAN

RESPONDENTS:-

1. UNION OF INDIA, REP. BY SECREARY TO GOVERNMENT,
   MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS,
   DEPARTMENT OF JUSTICE, JAISALMER HOUSE,
   MAN SINGH ROAD, NEW DELHI 110 011.

2. THE PAY & ACCOUNTS OFFICER,
   CENTRAL PENSION ACCOUNTING OFFICE,
   MINISTRY OF FINANCE, DEPARTMENT OF EXPENDITURE,
   THRIKOOT II COMPLEX, BHIKAJ CAMA PLACE, R.K.PURAM,
   NEW DELHI - 110 066.

3. THE ACCOUNTANT GENERAL (A&E), KERALA,
   P.B.NO.5607, M.G.ROAD, THIRUVANANTHAPURAM - 695 036.

ADDITIONAL R4 & R5 IMPLEADED:

ADDL.R4. SHYAMALA NAIR, 33/1947, VIGNESWARAM,
GANAPATHI TEMPLE ROAD, EDAPALLY, COCHIN.

ADDL.R5. LEELA CHANDRASEKHARA MENON,
ARCHANA, CHANDRASEKHARA MENON, COCHIN-11.

(ADDITIONAL RESPONDENTS 4 AND 5 ARE IMPLEADED AS PER ORDER DATED 29.3.2005 IN I.A.NO.4863 OF 2005).

R1 & R2 BY ASSISTANT SOLICITOR GENERAL OF INDIA
SRI.JOHN VARGHESE.
R3 BY SENIOR GOVERNMENT PLEADER SRI.M.R.SABU.
R4 & R5 BY ADV.SRI.G.UNNIKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1 - TRUE COPY OF LETTER DATED 13.6.2002 OF THE 1ST RESPONDENT, ADDRESSED TO THE 3RD RESPONDENT.

EXT.P2 - TRUE COPY OF LETTER DATED 17.7.2002 OF THE 3RD RESPONDENT, ADDRESSED TO THE 2ND RESPONDENT.

EXT.P3 - TRUE COPY OF O.M.NO.45/10/98-P&PW(A) DATED 17.12.98 ISSUED BY THE GOVERNMENT OF INDIA, MINISTRY OF PERSONNEL, PUBLIC GRIEVANCE AND PENSIONS, DEPARTMENT OF PENSION AND PENSIONER'S WELFARE.

EXT.P3(a) - PHOTOCOPY OF DIVISION BENCH DECISION OF THE ALLAHABAD HIGH COURT IN SMT.LAXMI DEVI VS. UNION OF INDIA AND OTHERS, REPORTED IN ARI 1989 ALLAHABAD 90.

EXT.P4 - TRUE COPY OF PETITIONER'S REPRESENTATION DATED 12.12.2004 BEFORE THE 1ST RESPONDENT.

EXT.P5 - TRUE COPY OF LETTER DATED 8.12.2003 OF THE 1ST RESPONDENT SANCTIONING FAMILY PENSION AT THE RATE OF Rs.7,800/- PER MONTH IN THE CASE OF JUSTICE R.C.DEO SHARMA, FORMER JUDGE OF THE ALLAHABAD HIGH COURT, WHO RETIRED FROM SERVICE BEFORE 1.11.86.

RESPONDENT'S EXHIBITS:- NIL.

- TRUE COPY -

V.K.Bali,C.J.

W.P.(C).No.8133 of 2005-R

Dated, this the 20th day of December, 2006

JUDGMENT

V.K.Bali,C.J. (Oral)

K.Parukutty Amma, the petitioner herein, is the widow of late Justice M.Madhavan Nair who was elevated as Judge of this Court on 22.6.1960 and on attaining the age of superannuation retired on 1.11.1970. In the present writ filed by her under Article 226 of the Constitution of India, she sought the following reliefs:

> "(i) Declare that the words restricting the application of the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Act, 1986 to High Court Judges who retired on or after its commencement are arbitrary, discriminatory and liable to be struck down as violative of Article 14 of the Constitution of India;
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> (ii) Declare that the heirs of High Court Judges who retired before the commencement of High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Act, 1986, are also entitled for family pension at the present rate of Rs.7,800/- per month;

(iii) Declare that the amendment brought by the High Court Judges (Salaries and Conditions of Service) Amendment Act, 2002 (Act 7 of 2003), to Section 17 (A)(1) of High Court Judges (Conditions of Service) Act, 1954, contrary to the recommendations made by the Fifth Central Pay Commission implemented by the Central Government, that all those who retired from same post will be entitled to pension and family pension at the same rate on the basis of the minimum pay in the revised scale introduced with effect from 1.1.1996 of the post last held by the pensioner/deceased Government Servant is arbitrary, discriminatory and liable to be struck down as violate of Article 14 of the Constitution of India.

(iv) Issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents to sanction and disburse family pension to the petitioner, at the present rate of Rs.7,800/- per month, with effect from 22.12.2001, together with interest at the rate of 18% per annum.

(v) Issue a writ of mandamus or any other appropriate writ, order or direction commanding the 1st respondent to consider and pass appropriate orders on Exhibit P4 representation submitted by the petitioner, in the light of Exhibit P5 forthwith; and

(v) Award costs".

2. It is the case of the petitioner that a Division Bench of the Allahabad High Court in **Laxmi Devi** v. **Union of India** (AIR 1989 Allahabad 90) held that the provisions contained in the Amendment Act, 1986 restricting the application of the High Court and Supreme Court Judges (Salaries and Conditions of

Service) Amendment Act, 1986 to the Judges who have retired on or after its commencement are discriminatory and liable to be struck down. The basic pension of the petitioner's husband was revised and refixed at Rs.9,291/- per month on 1.1.1996. The Government India vide Exhibit P3, O.M.No.45/10/98-P&PW(A) dated 17.12.1998, clarified that the pension of all pensioners irrespective of their date of retirement will not be less than 50% of the minimum pay in the revised scale of pay introduced with effect from 1.1.1996 of the post last held by the pensioner. Similarly, with effect from 1.1.1996 family pension shall not be less than 30% of the minimum pay in the revised scale introduced with effect from 1.1.1996 of the post last held by the pensioner/deceased Government servant. The husband of the petitioner died on 21.12.2001. The first respondent vide Exhibit P1 letter dated 13.6.2002, conveyed the sanction of the President for payment of family pension to the petitioner at the rate of Rs.1,302/- per month with effect from 22.12.2001. Based on Exhibit P1, the 3rd respondent vide Exhibit P2 letter dated 17.7.2002 informed the 2nd respondent regarding authorisation of family pension to the petitioner at the rate of Rs.1,302/- per month with effect from 1.1.2002. Vide Exhibit P5 letter dated

8.12.2003 of the 1st respondent, family pension at the rate of Rs.7,800/- per month was sanctioned in the case of Justice R.C.Deo Sharma, former Judge of the Allahabad High Court, who retired from service before 1.11.1986. So, the petitioner claimed family pension at the rate of Rs.7,800/- per month vide Exhibit P4 representation before the 1st respondent, through registered post. It is when no tangible results were forthcoming on the said representation, the present writ for the reliefs indicated above was filed.

3. It is pertinent to mention that Shyamala Nair, wife of late Justice G.Balagangadharan Nair and Leela Chandrasekhara Menon, wife of late Justice T.Chandrasekhara Menon made an impleading application, which was allowed. They are similarly situate as the writ petitioner Smt.K.Parukutty Amma.

4. In the statement filed on behalf of the 3rd respondent, it has, *inter alia,* been pleaded that Justice M.Madhavan Nair, Judge of High Court of Kerala, retired from service on 1.11.1970 and expired on 21.12.2001. All other facts made in the petition have also not been controverted. It is also admitted that family pension of the petitioner was fixed at Rs.1,320/- from 22.12.2001. It is also mentioned that Ministry of

Law & Justice vide letter dated L 11025/3/2003-Jus. dated 21.12.2004 had suggested to adopt the guidelines in the O.M. Dated 17.12.1998 in respect of Pre-1986 retired Judges for extending the benefit to similarly placed persons and on the basis of the clarification aforesaid, family pension in respect of the petitioner was revised to Rs.7,800/- per month with effect from 1.1.2002.

5. It is clear from the averments made in the statement filed on behalf of the 3rd respondent that the desired relief has been given to the petitioner. Mr.John Varghese, learned Assistant Solicitor General of India informs that the parties impleaded in the petition too have been given the desired relief.

6. Mr.Anil K.Narendran, learned counsel for the petitioner, however, contends that the judgment of the Allahabad High Court and the clarification made by the Government of India, Ministry of Law & Justice as mentioned above is, however, not being applied in similarly situated cases and it is unfortunate that only if a petition is filed the desired relief is given. This causes untold miseries to the retired Judges and if the Judge is expired, to the widows. He vehemently contends that a direction be issued to the respondents to uniformly apply the policy,

judgment of the Allahabad High Court and a clarification issued by the Ministry of Law and Justice and accordingly pay pension/family pension. There cannot be any opposition to the only prayer made by the counsel. Surely, the Government cannot force every concerned person to approach the Court for desired relief. It is the bounden duty of the Government to follow judicial precedents and also policies or decisions taken by it. This Court while disposing of the present petition as having become infructuous would still declare that heirs of High Court Judges who retired before commencement of High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Act, 1986 would be entitled to family pension at the rate of Rs.7,800/- per month or such rate as may be later revised, of its own or at the most on a request made by the heirs without constraining them to file a petition for the desired relief.

V.K.Bali
Chief Justice

vku/-